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IN THE

SUPREME COURT OF THE UNITED STATES

April Term, 1977

No. 76-352

E. C. CHAPPELLE, JR.,

Appellant,

versus

THE GREATER BATON ROUGE AIRPORT DISTRICT, ET AL.,

Appellees.

On Appeal from the Supreme Court for the State of Louisiana

Filed September 7, 1976

Probable Jurisdiction Noted

January 10, 1977

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NUMBER 179,759, DIVISION "J"
19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

E. C. CHAPPELLE, JR.

versus

THE GREATER BATON ROUGE
AIRPORT DISTRICT, ET AL

WRITTEN REASONS FOR JUDGMENT

Plaintiff has filed this suit seeking an injunction prohibiting defendants from removing him from his position as a member of the Greater Baton Rouge Airport Commission. Plaintiff's request for a preliminary injunction was denied and plaintiff was thereafter removed from this position. Plaintiff has amended his petition and now seeks a declaratory judgment concerning his qualifications to hold the position on the Airport Commission and alternatively seeking to be reinstated into his position as Executive Director and Secretary of the Greater Baton Rouge Airport Commission.

The facts are essentially as follows: Plaintiff for a period of five years occupied his position of Executive Director and Secretary of the Greater Baton Rouge Airport Commission. On May 13, 1974, plaintiff resigned this position and was appointed to a position on the Greater Baton Rouge Airport Commission. Plaintiff's position on the Airport Commission has been declared vacant by the Parish Clerk, Rosemary Broussard, based on a legal opinion rendered by Parish Attorney, Joseph F. Keogh, stating that plaintiff is not qualified

to serve as a member of the Commission, because at the time of his appointment, plaintiff owned no property assessed in East Baton Rouge Parish. Pursuant to this legal opinion and declaration by Mrs. Broussard, plaintiff on March 4, 1975, at the Commission meeting was denied his position as a member of the Airport Commission.

Basically plaintiff contends that he meets the qualifications for the position on the Airport Commission; that if he does not meet the qualifications, then the property requirements deny him equal protection and due process of law and, thus, are unconstitutional as violative of the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution; and alternatively that he is entitled to be reinstated to his former position as Executive Director and Secretary of the Greater Baton Rouge Airport District.

Act 151 of 1969 requires the ownership of "property assessed in East Baton Rouge Parish" in order for the person to serve on the Airport Commission.

The foremost question presented is: What does the word "property" mean in Act 151 of 1969 after considering its "most usual signification"? Our Legislature, in enacting that act, placed no limitation or meaning on the word "property" nor did it set forth any guidelines so as to determine the meaning of that word. Therefore, outside sources must be consulted, in light of the legislative intent, to decide the meaning of that word.

73 Corpus Juris Secundum, Property, Section 1, Page 137. sets forth the meaning of the term "Property" when used generally in a statute:

> "* * * Generally, as used in statutes, the term 'property' should be given its ordinary meaning * * *.

> "The word 'property' includes both real and personal property, and ordinarily will be construed as meaning both real and personal property, * * *."

The Louisiana Legislature in enacting the Louisiana Code of Civil Procedure Article 5251 (13) has given effect to the abovementioned broad interpretation of the mere word "property." This article states that:

> "(13) 'Property' includes all classes of property recognized under the laws of this state: movable or immovable, corporeal or incorporeal."

Likewise, in support of this unrestricted interpretation, the Louisiana Supreme Court in interpreting a taxing statute said in *Kansas City Life Insurance Company v. Hammett*, 177 La. 930, 149 So. 525, 526 (1933):

> "The term 'property' is sufficiently comprehensive to include every species of estate, real and personal, and everything which one person can own and transfer to another. It extends to every species of right and interest capable of being enjoyed as such upon which it is practical to place a money value."

The Louisiana Supreme Court then continued:

> "The word 'property' as that term is used in the statutes relating to assessment and taxation, refers to every species of valuable right or interest which is subject to ownership, or that which has an exchangeable value or which goes to make up one's wealth or estate; all things which have a pecuniary value. 'Property' says Webster, 'in a broad sense, is any valuable right or interest considered primarily as a source or element of wealth.' "

Since the word "property" is not qualified as to whether it must be real or movable property, the Court is of the opinion that "property" as used in the statute includes both real and movable property, with the only qualification being

that the property (real or movable) must be "assessed in East Baton Rouge Parish."

It is the Court's opinion that plaintiff has failed to prove that at the time of his appointment, he owned any property assessed in the Parish. The introduction into evidence of a pink slip showing that sales tax had been paid by Mr. Chappelle on a Porsche automobile does not satisfy the requirement of assessment as set out in the act. It is interesting to the Court that Mr. Chappelle was given an opportunity to present any evidence of the ownership of "assessed property" owned on May 8, 1974. This was done by Mrs. Rosemary Broussard, Parish Clerk, in her letter of February 20, 1975, to plaintiff (P-7).

The Court is now faced with the question of whether the subsequent purchase of real property assessed in the Parish (prior to the time of his removal) cured the infirmity that previously existed with respect to his qualifications to hold the office. The Court believes not. The qualifications for the office are determined at the time of the appointment, May 8, 1974, not February 7, 1975, the date of the purchase of real property in the Parish of East Baton Rouge.

We come now to the question of whether or not the requirement that plaintiff own property assessed in the Parish (either real or movable) is constitutional.

Plaintiff contends basically that any property requirement is violative of his rights under the Fourteenth Amendment of the United States Constitution in that it denies him equal protection of the law and due process of law.

Any law which discriminates between citizens must be judged according to the **right involved** and the **basis for the discrimination**.

If the **right involved** is a **fundamental right**, then the

government must show that there is a "compelling state interest" for the discrimination. It does not appear that there is a compelling state interest in requiring Airport Commissioners to be property owners. Thus, if the right to hold appointed office is a **fundamental right**, the property ownership requirement is unconstitutional as a denial of equal protection of the law in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

United States Supreme Court cases say that among the fundamental rights are marriage [*Loving v. Virginia*, 88 U.S. 1], procreation [*Skinner v. Oklahoma*, 316 U.S. 535], and contraception [*Eisenstadt v. Baird*, 405 U. S. 428]. The right to vote is a fundamental right [*Dunn v. Blumstein*, 405 U.S. 330]. The right to have one's vote weighed equally with others is a fundamental right [*Reynolds v. Sims*, 377 U. S. 533]. The right to travel interstate is fundamental [*Shapiro v. Thompson*, 394 U.S. 619] as are First Amendment rights [*Police Department of City of Chicago v. Mosley*, 408 U.S. 92].

If there is no authority for a fundamental right, it must be seen whether the right is based on basic values that underlie our society.

The Court does not believe that the right to hold an appointive office is a fundamental right. If the right involved is **not** a fundamental right, then plaintiff must prove that there is **no rational basis** for the distinction between citizens drawn by the statute. It appears that there is a rational basis for requiring Airport Commissioners to be property owners. This insures that the persons on the Airport Commission are affected by their decisions and concerned and connected with the area they represent.

In support of his contention that the property requirement is unconstitutional, plaintiff has cited the cases of

Kramer v. Union Free School District No. 15; 394 U. S. 621, 89 Supreme Court 1886 (1969); *Cipriano v. City of Houma*, 395 U. S. 701, 89 Supreme Court 1897 (1969); and *City of Phoenix, Arizona v. Kolodziejski*, 399 U. S. 204, 90 Supreme Court 1990 (1970). These cases involved the denial of the franchise to otherwise qualified electors, simply because they did not own real property. The Court is of the opinion that these cases are distinguishable from the instant case because the right to vote is a fundamental right, whereas, the Court does not believe that the right to hold an appointive office is a fundamental right. It is, therefore, the Court's opinion that the property ownership qualification of Act 151 of 1969 is not unconstitutional.

Finally it must be determined whether or not plaintiff is entitled to rescind the agreement he made to step down as Executive Director and Secretary of the Greater Baton Rouge Airport District in exchange for an appointment to the Greater Baton Rouge Airport Commission. The Court is of the opinion that Plaintiff is not so entitled.

Plaintiff contends that he entered into a contract of exchange between himself and the Airport Authority whereby he gave up one job in return for an appointment to the Airport Commission. While it is apparent to the Court that there were a great deal of political negotiations involved, the Court does not believe that the Authority acting as a governmental body ever bound itself to such an exchange agreement. Plaintiff's testimony indicates that his agreement was made by long distance telephone call with Councilman Currier. The letter of resignation submitted by Mr. Chappelle (D-4) contained no reservations, qualifications, or limitations on his resignation. The letter addressed to Mr. Joseph F. Keogh, the City-Parish Attorney, reads as follows:

"I hereby submit my resignation as Executive Director and Secretary of the Greater Baton Rouge Airport District."

The Court further notes that the minutes of the Greater Baton Rouge Airport Authority (D-1) merely accept plaintiff's resignation and at the same time appoint him to the position on the Airport Commission. No correlation, limitation, or other connection is drawn between the two acts so as to evidence an intent to enter into a contract of exchange in relation to the two positions.

The Court refuses to believe that the City Council was guilty of any fraud or artifice because they knew that plaintiff lacked the necessary qualifications for appointment to the Commission. There was not one scintilla of evidence, other than the testimony of the plaintiff, in regard to any "deal" regarding the job swap. It is incumbent upon the plaintiff to prove the facts underlying any such arrangement. On the basis of the evidence presented on the trial of the case, the Court is of the opinion that plaintiff has fallen far short of showing that the City Council entered into any contract of exchange with him. The Court is of the opinion that the negotiations between the parties were of a political nature and not of a contractual nature. The Court is, therefore, of the opinion that the negotiations between the parties did not amount to a contract of exchange as contemplated in LSA-C.C. 2660, et seq. Accordingly, the Court does not believe that under the mandate of LSA-C.C. 2663 plaintiff is entitled to be returned to his position as Executive Director and Secretary of the Greater Baton Rouge Airport District.

Defendants have requested their attorney's fees in this matter. This point was not argued and no evidence was presented which showed a statutory or contractual basis on the claim for attorney's fees. Therefore, the Court is of the opinion that the claim for attorney's fees is without merit.

For the above and foregoing reasons, the Court is of the opinion that defendants are entitled to judgment in their favor and against plaintiff, E. C. Chappelle, Jr., dismissing

plaintiff's suit. Defendants' request for attorney's fees is denied. All costs of this proceeding are to be borne by plaintiff.

Judgment will be signed accordingly.

Baton Rouge, Louisiana, this 23rd day of July, 1975.

s/ STEVE A. ALFORD, JR.
Judge

NUMBER 179,759, DIVISION "J"
19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

E. C. CHAPPELLE, JR.

versus

THE GREATER BATON ROUGE AIRPORT DISTRICT, ET AL

JUDGMENT

This cause came on the 22nd day of July, 1975, for hearing pursuant to the previous orders of this court. Present: Herschel C. Adcock, attorney for E. C. Chappelle, Jr., and Edward J. Fetzer, attorney for the defendants.

After hearing the pleadings, testimony and oral arguments,

IT IS ORDERED that judgment is rendered herein in favor of defendants, Woodrow W. Dumas; William J. Guste, Jr.; and William S. Day, Jr., Jewel J. Newman, Earl Harrison, George R. Dabbs, Michael G. Roubique, Edgar L. Watts, Jr., Stanley J. Gross, Johnny H. Dykes, William T. Winfield, Joseph A. Delpit, Tommy Neck, and Dr. C. P. Currier in their capacity as members of The Greater Baton Rouge Airport District, The Greater Baton Rouge Airport Authority and The City Council, dismissing plaintiff's suit at his cost.

JUDGMENT FURTHER RENDERED in favor of plaintiff and against defendants denying defendants' request for attorney's fees.

JUDGMENT RENDERED on the 23rd day of July, 1975.

JUDGMENT READ AND SIGNED in Open Court on this 28th day of July, 1975.

s/ STEVE A. ALFORD, JR.
Judge, 19th Judicial District Court

NUMBER 179,759, DIVISION "J"
19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

E. C. CHAPPELLE, JR.

versus

THE GREATER BATON ROUGE
AIRPORT DISTRICT, ET AL

ORAL REASONS FOR JUDGMENT

This is a suit for an injunction. Defendants are the members of the Baton Rouge City Council, the Greater Baton Rouge Airport District, the Greater Baton Rouge Airport Authority, who are named in their dual capacity as members of each, Mayor-President Woodrow Dumas of the city of Baton Rouge and the parish of East Baton Rouge.

The matter in controversy concerns the plaintiff's resignation on May 13, 1974, from the position of Executive Director and Secretary of the Greater Baton Rouge Airport District; his taking a position on the Greater Baton Rouge Airport Commission; a legal opinion rendered by Parish Attorney, Joseph F. Keogh, that plaintiff is not qualified to serve as a member of the Airport Commission because at the time of his appointment the petitioner owned no real property in the parish of East Baton Rouge, and the declaration of the Parish Clerk, Rosemary Broussard, that plaintiff's position on the Greater Baton Rouge Airport Commission is now vacant and is eligible to be filled by a qualified person.

Plaintiff sought a temporary restraining order directed

to the defendants, restraining them from removing plaintiff from the Greater Baton Rouge Airport Commission and from appointing anyone else to occupy the petitioner's position on said Commission, until a Court determination is made of plaintiff's status with regard to his qualifications for that position; and, further, from appointing any other person or elevating D. R. Gianelloni from his present position of temporary Executive Director and Secretary of the Greater Baton Rouge Airport District to the head of that position until the validity of the compromise agreement is determined.

Judge Luther Cole of this Court denied the restraining order on February 26, 1975, stating as his reason for such refusal "[t]he Court will not restrain a contemplated legislative act of defendants."

Presently before the Court is a rule ordering the defendants to show cause why a preliminary injunction in the form and substance of the aforementioned temporary restraining order prayed for should not issue herein.

LSA-C.C.P. Art. 3601 provides that:

> "An injunction shall issue in cases where irreparable injury, loss, or damage may otherwise result to the applicant, or in other cases specifically provided by law.
>
> "During the pendency of an action for an injunction the court may issue a temporary restraining order, a preliminary injunction, or both, in accordance with the provisions of this Chapter."

A writ of injunction should issue only where the party seeking it is threatened with irreparable loss or injury and is without an adequate remedy at law and where the facts supporting the writ are clear and convincing. Law for this proposition is found in *Louisiana State Board of Education, etc. v. National Collegiate Athletic Association*, 273 So.2d 912 (La. App. 3rd Cir. 1973).

Further, a preliminary injunction is an interlocutory procedure usually conservatory in nature, and has the object and purpose of maintaining the existing status of litigants upon a prima facie showing that to do otherwise would result in irreparable injury pending a decision on the permanent injunction, which is dispositive of the issues on the merits. Jurisprudence in this regard is found in *Employers Overload Company v. Employers Overload Company of New Orleans, Inc., et al*, 266 So.2d 546 (La. App. 4th Cir. 1972).

It appears to this Court that plaintiff has not made a prima facie showing of "irreparable injury, loss, or damage" such as would entitle him to a preliminary injunction pending decision on the permanent injunction.

The only threatened irreparable injury alleged by plaintiff or proven by the evidence this morning is found in, and based upon Para. 18 of plaintiff's petition regarding "continued and constant innuendo" and "immediacy of the pending danger of petitioner's being removed from his position on the Commission * * *.", and testimony to the effect this morning that removal of him from the Commission would interfere with his education as an aviation expert in connection with his work with Hickory Construction Company.

It appears that despite the opinion of the Parish Attorney to the effect that the plaintiff lacks the qualifications to hold his position on the Airport Commission, and the declaration of the Parish Clerk that the plaintiff's position on the Airport Commission is now vacant and eligible to be filled, the plaintiff as a matter of fact has not been removed by the City Council from his position on the Airport Commission. It is the fear of removal from the Commission that prompts the plaintiff's suit for injunction. The Court is of the opinion that a threatened removal does not amount to "irreparable injury, loss, or damage." If the threat becomes a reality and the plaintiff is removed, or indeed if he has al-

ready been removed, then he has an adequate remedy at law by means of a suit to be reinstated to that position.

It further appears that the "immediacy of the pending danger" related to by plaintiff has come and gone, for the Parish Council met subsequent to the filing of the petition by plaintiff and did not vote to remove him, or take any action whatsoever if indeed a vacancy existed on the Commission.

It further appears that plaintiff seeks at this time to have the Court interfere with a contemplated legislative act of the defendants. Since the plaintiff has an adequate remedy at law if he is removed, for the Court to prevent the Council from removing him prior to a legislative decision would amount to a usurpation of the judiciary of a legislative function of a legislative branch of government.

The plaintiff contends that if he is not qualified to serve on the Commission because he did not own immovable property at the time of his appointment, then Act 151 of 1969 is a denial of equal protection of the law, and as such is a violation of his Constitutional rights.

A municipal council, when acting, or proposing to act, in a legislative capacity, upon a subject within the scope of its powers, is entitled to the same immunity from judicial interference as is the state legislature or any other law-making body. A court, being vested with judicial, not legislative, powers, cannot properly interpose any obstacle to the exercise of the legislative discretion vested in such municipal body. Subject to the exceptions noted, a court will not enjoin a municipal legislative body from exercising legislative powers, even though its action may be unconstitutional or ultra vires, especially at the suit of a private party, and by so doing virtually sit in judgment on proposed city legislation in advance of its enactment.

The usual ground for asking injunctive relief against the enforcement of statutes is their invalidity. But invalidity, of itself, is not sufficient to warrant the exercise by the court of its extraordinary injunctive power. The mere fact that a statute is alleged to be unconstitutional or invalid will not entitle a party to have its enforcement enjoined. Further circumstances must appear to the Court before bringing the case under the recognized Court jurisdiction and presenting some actual or threatened and irreparable injury to complainant's rights for which there is no adequate remedy at law. If it is apparent that the law can furnish all the relief to which the complainant is entitled, the injunction will be refused.

Injunctive relief is a harsh remedy, and should not be granted unless facts supporting its justification are clear and convincing, and the rules governing the use of the injunctive process are strictly construed. The law for this proposition is found in *Maybelle M. Olsen v. The City of Baton Rouge, et al*, 247 So.2d 889 (La. App. 1st Cir. 1971).

Viewing all the above, the Court is of the opinion that plaintiff has not made a prima facie showing of "impending irreparable injury, loss, or damage" such as is required for the issuance of a preliminary injunction; that the Court should not restrain a contemplated legislative act unless there is a grave danger of irreparable injury or damage to property rights.

Accordingly, without passing on the merits of whether plaintiff may be entitled to a permanent injunction, after a full hearing on the merits of the matter, the rule to show cause why a preliminary injunction should not issue is hereby dissolved and the preliminary injunction denied.

Judgment will be signed accordingly.

NUMBER 179,759, DIVISION "J"
19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

E. C. CHAPPELLE, JR.

versus

THE GREATER BATON ROUGE
AIRPORT DISTRICT, ET AL

JUDGMENT

This matter came on to be heard, pursuant to an order issued by this Court, on the 4th day of March, 1975;

Present in Court were Herschel C. Adcock, attorney for plaintiff, Joseph F. Keogh and Edward V. Fetzer, attorneys for the defendants;

After reviewing and considering the pleadings and evidence adduced on the trial of said rule, and the law, and for oral reasons this day assigned.

IT IS ORDERED, ADJUDGED AND DECREED that the order issued previously herein ordering the defendant to show cause on this day why a preliminary injunction should not issue herein, be and it is hereby recalled, vacated and set aside and further;

IT IS ORDERED, ADJUDGED AND DECREED that the preliminary injunction herein prayed for is hereby denied, and further;

IT IS ORDERED, ADJUDGED and DECREED that plaintiff pay all the costs of these proceedings.

JUDGMENT RENDERED, March 4, 1975, in Open Court, and Signed in Open Court on the 11th day of March, 1975 Baton Rouge, Louisiana.

s/ STEVE A. ALFORD, JR.
Judge, 19th Judicial District Court

NUMBER 179,759, DIVISION "J"
19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

E. C. CHAPPELLE, JR.

versus

THE GREATER BATON ROUGE
AIRPORT DISTRICT, ET AL

APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE, HON. STEVE A. ALFORD, JUDGE, PRESIDING

Before Sartain, Edwards, and Bennett
Edwards, J.

Plaintiff-appellant sued to enjoin defendant-appellees from removing him from his position as member of the Greater Baton Rouge Airport Commission. When the preliminary injunction was denied, appellant was removed from the Commission. Appellant amended his petition and sought a declaratory judgment relative to his qualifications to hold the position on the Commission and alternatively asked to be reinstated to his former position of Executive Director and Secretary of the Greater Baton Rouge Airport District (District). The trial court rendered judgment in favor of defendants and against plaintiff, dismissing his suit. From this ruling plaintiff now appeals.

There are three issues before us:

1. Did appellant fulfill the requirement of Act 151 of 1969 that appointees to the Commission must own "property assessed in East Baton Rouge Parish?"

2. If not, is that requirement violative of appellant's rights under the Fourteenth Amendment to the United States Constitution guaranteeing equal protection of the laws?

3. Was a contract of exchange effectuated between appellant and appellees whereby appellant was to give up his position as Director of the District in return for his appointment to the Commission, and did his removal from the Commission constitute a breach thereof warranting in law the relief of reinstatement to his former position?

FACTS

The facts as found by the trial court and as reflected by the record are not in dispute. Appellant served as Director of the District for a period of some five years until his resignation on May 13, 1974. Prior to this date, appellant had experienced increasing unspecified harassment in his capacity as Director. As a compromise gesture, he then proposed to Dr. C. O. Currier, member of the City-Parish Council, the appointing authority for the Commission, that he, appellant, would resign his position as Director in exchange for his being appointed to the Commission. On May 13, 1974, the appellant resigned as Director and was appointed to the Commission. Subsequently, the Parish Clerk declared appellant's position on the Commission vacant. The basis for this action was a legal opinion of the Parish Attorney stating that appellant was not qualified to serve as a member of the Commission because at the time of his appointment he owned no property assessed in East Baton Rouge Parish. This suit followed.

(1) "Property assessed" under Act 151 of 1969

Act 151 of 1969 requires that an appointee to the Com-

mission own "**property assessed in East Baton Rouge Parish.**" At the trial, appellant introduced evidence that he had paid sales tax on an automobile that he purchased prior to his appointment in 1974. He also introduced evidence of a purchase of a piece of immovable property located in East Baton Rouge Parish on February 7, 1975.

Initially, we agree with the trial court's determination that the purchase on February 7, 1975, several months after the appointment, is irrelevant to the determination of appellant's qualifications for the appointment. Qualifications for appointive office are determined at the time of the appointment.

The question remains whether the ownership of and the payment of sales tax on the purchase of the automobile satisfy the **requirement of "property assessed."**

The appellant contended and the trial court agreed that the term "property" should include movables as well as immovables. Where, as here, there are no limitations placed on the term within the particular statute in question, both the legislation and jurisprudence support such a broad, unrestricted interpretation. See *La. Civ. Code* art. 14; *La. Code Civ. P.* art. 5251 (13); *Kansas City Life Ins. Co. v. Hammett*, 177 La. 930, 149 So. 525 (1933); 73 C.J.S. *Property* Section 1.

The further qualification contained in the Act is that the property be "assessed in East Baton Rouge Parish." Appellant argues that (1) property does not have to appear on the assessment rolls to be assessed and (2) the payment of a sales tax constitutes an assessment of that property. Pretermitting for the moment appellant's initial contention, we cannot accept the argument that the payment of sales tax constitutes an assessment. Black's Law Dictionary 150 (rev. 4th ed. 1968) makes clear the distinction between the two. "Assessment" is:

> "The listing and valuation of property for the purpose of apportioning a tax upon it, either according to value alone or in proportion to benefit received. Also determining the share of a tax to be paid by each of many persons; or apportioning the entire tax to be levied among the different taxable persons, establishing the proportion due from each. . . . It fixes the liability of the taxpayer and ascertains the facts and furnishes the data for the proper preparation of the tax rolls.
>
> "Assessment" and "levy" are frequently used interchangeably. . . . Though properly speaking it does not include the levy of taxes. . . . Assessment is also popularly used as synonym for taxation in general, the authorative imposition of a rate or duty to be paid, but in its technical signification it is only taxation for a special purpose or local improvement, local taxation as distinguished from general taxation; taxation on principle of apportionment according to the relation between burden and benefit; whole taxes are impositions for purpose of general revenue.
>
> "An assessment is doubtless a tax, but the term implies something more; it implies a tax of a particular kind, predicated upon the principle of equivalents, or benefits, which are peculiar to the persons or property charged therewith, and which are said to be assessed or appraised, according to the measure or proportion of such equivalents; whereas a simple tax is imposed for the purpose of supporting the government generally, without reference to any special advantages which may be supposed to accrue to the persons taxed. Taxes must be levied, without discrimination, equally upon all the subjects of property, whilst assessments are only levied upon lands, or some other specific property, the subjects of the supposed benefits: to repay which the assessment is levied."

So defined, the payment of a sales tax does not constitute an assessment.

Although, as appellant contends, the appearance of property on the assessment rolls may not be the exclusive proof

of assessment, such listing is indeed competent evidence, and such that the legislature might choose to rely upon for determining assessment and ownership of property assessed.

(2) **Constitutionality of Act 151 of 1969**

Does the requirement of Act 151 of 1969 that appointees own property assessed in East Baton Rouge Parish violate appellant's right to equal protection of the law?

When a legislative classification is challenged, as here, on Fourteenth Amendment equal protection grounds, one of two tests may be applied to determine the validity of the statute. The "compelling state interest" test is applied when there is involved a "fundamental" right, such as the right to vote or to marry whomever one chooses, or when there is employed a "suspect" criterion, such as race or sex. In all other cases traditional equal protection standards apply. Appellant cites, and this court has found, no cases holding that the right to be considered for appointive public office is a fundamental right. Therefore, we will test the classification herein by traditional standards of equal protection.

Traditional standards of equal protection have been long established. In *McGowan v. Maryland*, 366 U.S. 420, 81 S. Ct. 1101 (1961), the Court summarized the rule:

> "The constitutional safeguard (equal protection) is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. State Legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it."
>
> 81 S. Ct. at 1105

In enacting Act 151 of 1969, the legislature sought to insure that the members of the commission would have a substantial interest in performing their duties effectively and conscientiously. The legislature could have concluded reasonably that property owners of East Baton Rouge Parish would have that interest. **To effectuate this objective, the legislature chose as its criterion for appointment to the Commission, the ownership of "property assessed in East Baton Rouge Parish."** The fact that the determination of property ownership could have been made otherwise in no way militates against the validity of the choice made. In the achievement of a valid legislative objective, there is no requirement under traditional equal protection standards that the legislature choose the best method available, but only that there be a rational basis for the means chosen.

La. R.S. 47:1956-1957 require every owner of property, movable and immovable, to submit to the Parish Assessor a list of that property. The legislature could have chosen to utilize this requirement as a simple method of determining property ownership for the purposes of eligibility for appointment to the Commission under Act 151 of 1969. Such a scheme is not irrational.

Appellant contends that the payment of sales tax on the purchase of an automobile should suffice to qualify him under the Act. There is no doubt that the payment of such a tax is evidence of ownership of property, at least at the time of purchase. **However, it does not constitute an assessment of his property, as indicated** *supra*. At issue is the rationality **vel non** of the legislative scheme employed. **The legislature chose to make assessment, rather than payment of sales tax, the criterion of ownership.** We are not concerned with the relative merits of the possible schemes; the one chosen is rationally related to a valid legislative objective and is therefore constitutional.

Appellant cites *Turner v. Fouche*, 396 U.S. 346, 90 S.Ct. 532 (1970) as mandating that we hold Act 151 of 1969 unconstitutional. In *Turner*, the Court found a Georgia statutory

requirement of ownership of immovable property for appointment requirement of ownership of immovable property for appointment to a county board of education to deny equal protection of the laws under the traditional test. However, considering our increasing population and diminishing availability of land, there are many good citizens who own no immovable property but who do own movable property in varying amounts. **Therefore, a classification like that of the Georgia statute which eliminates those who own no immovable or real property from consideration for public office is far more invidious than one like ours which bars only those who own no property at all.** With this in mind, we note the Court's closing remarks in *Turner, supra*:

> **"Without excluding the possibility that other circumstances might present themselves in which a property qualification for office-holding could survive constitutional scrutiny**, we cannot say, on the record before us, that the present freeholder requirement for membership on the county board of education amounts to anything more than invidious discrimination. (emphasis added).
>
> 90 S.Ct. at 542

We therefore hold the legislative scheme employed under Act 151 of 1969 *prima facie* constitutional. There has been no allegation that the assessment practices **as applied** in this case are unconstitutional, nor has there been any evidence adduced on this issue. We cannot take judicial notice of the assessment practices of the assessor of East Baton Rouge Parish. *La.* R. S. 15:422. We therefore do not pass on the issue of the constitutionality of the **application** of the legislative scheme.

3. **Exchange**

Appellant testified at the trial concerning his proposal to Dr. Currier and of the understanding that he, appellant, had that an agreement was made to "exchange" his position as Director for a position on the Commission. Because he

was later ousted from the Commission, appellant now invokes *La. Civ. Code* art. 2663[1] for relief in the form of reinstatement as Director.

Appellant is not in a position to avail himself of the provisions of this article.

La. Civ. Code art. 2660 defines exchange as a contract whereby the parties give to one another one thing for another. *La. Civ. Code* arts. 2660-2667 (Of Exchange) are found in Book III of the Civil Code—"Of The Different Modes Of Acquiring The Ownership Of Things." The last, Article 2667, states that, except for the differences found in the preceding seven articles, all the provisions relative to sales apply to exchange. Chapter 3 of Title VII (Of Sale) is titled "Of Things Which May Be Sold." "Effects of commerce" (Article 2448); "the rights, titles and interests to an inheritance" (Article 2449); "an uncertain hope . . . as the fisher sells a haul of his net before he throws it" (Article 2451)—all are illustrative of the various things which may be sold or exchanged. **However, implicit in every sale or exchange is ownership, acquired and divested.** A public official does not **own the public office he holds**; he cannot barter or sell his office as an effect of commerce, an inheritance right, an uncertain hope, or as anything else. He is elected or appointed to a position of fidelity to the public trust.

There is no merit in, and this court will not consider, applying the codal provisions of our private law of exchange to a political controversy involving the attempted barter of public office.

The decision of the trial court is affirmed at appellant's cost.

AFFIRMED.

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1. The exchanger, who is evicted by a judgment of the thing he has received in exchange, has his choice either to sue for damages or for the thing he gave in exchange.

COURT OF APPEAL, FIRST CIRCUIT,
STATE OF LOUISIANA

No. 10,621

PARISH OF EAST BATON ROUGE

E. C. CHAPPELLE, JR.

versus

THE GREATER BATON ROUGE
AIRPORT DISTRICT, ET AL

On application for re-hearing.

Rehearing refused.

Baton Rouge, Louisiana, April 12, 1976.

s/ C. Lenton Sartain

s/ Wallace A. Edwards

Judges

SUPREME COURT OF LOUISIANA
New Orleans, 70112
June 9, 1976

No. 58,025

E. C. CHAPPELLE, JR.

versus

THE GREATER BATON ROUGE
AIRPORT DISTRICT, ET AL

In re: E. C. Chappelle, Jr., applying for Certiorari, or writ of review, to the Court of Appeal, First Circuit, Parish of East Baton Rouge.

Writ denied: no merit in the assignment of errors.

/s/ WFM

/s/ JWS

/s/ FWS

/s/ AT, Jr.

DIXON, J., is of the opinion the writ should be granted.

CALOGERO, J., is of the opinion the writ should be granted. Turner v. Fouche, 396 U.S. 346, 90 S.Ct. 532 (1970) mandates relief for applicant.

STATEMENT OF COSTS

BEFORE ME, E. Wade Shows, Notary Public in and for the Parish of East Baton Rouge, State of Louisiana

PERSONALLY CAME AND APPEARED E. C. Chappelle, Jr., appellant herein, and after being first duly sworn did depose and say that

In preparation of the printed appendix to his brief to the Supreme Court of the United States in November 76-352 he has incurred the costs of $_____.

E. C. CHAPPELLE, JR.

SWORN TO AND SUBSCRIBED before me
this 14th day of February, 1977.

E. WADE SHOWS, Notary Public

CERTIFICATE OF SERVICE

I, Herschel C. Adcock, one of the attorneys for E. C. Chappelle, Jr., appellant herein, and a member of the Bar of the Supreme Court of the United States, do hereby certify that on the 22nd day of February, 1977, I served a copy of the foregoing appendix, together with a statement of the costs of preparing the appendix, on The Greater Baton Rouge Airport District, et al., appellees, in connection with this appeal, by delivering the same to their counsel of record, Mr. Joseph F. Keogh, Parish Attorney, at his office in the Municipal Building, Baton Rouge, Louisiana, and upon Mr. William J. Guste, Jr., Attorney General for the State of Louisiana.

HERSCHEL C. ADCOCK, Attorney
for the Appellant